

REMARKS

It is noted that claims 1, 3 and 10 are rejected under 35 U.S.C. 102(b) over the patent to Hesselbart.

Claims 1, 3, 8 and 9 are rejected under 35 U.S.C. 102(b) over the patent to Taruli.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 102(b) over the patent to McKinney.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) over the patent to McKinney over the patent to Shute.

Claim 11 is rejected under 35 U.S.C. 103(e) over the patent to Elson.

Also, claim 9 is objected to and claim 11 is rejected under 35 U.S.C. 112.

With the present Request for Reconsideration, applicant has canceled claims 1-10 and amended claim 11 in compliance with the Examiner's requirements.

It is respectfully submitted claim 11 clearly and patentably distinguishes the present invention from the prior art.

Claim 11 specifically defines a golf training apparatus which includes the following elements:

- a rack which is upright and made of a rigid material;
- a rod provided on the upright rack and aligned substantially horizontally and parallel to a desired hitting direction,
- the rod is arranged at a distance to said upright rack such that a golf club is swingable through underneath the rod,
- while the rack is rigid, the rod is inflatable, so that touching the inflatable rod by a golfer is harmless and not accompanied by a risk of injuries.

Turning now to the reference, in particular to the patent to Elson, it is respectfully submitted that the invention disclosed in the patent to Elson deals with a valve for inflating balloons, and therefore it belongs to

a non-analogous art. It is believed to be advisable to cite some decisions related to this issue. In re Clay 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992) it was stated that:

"Two criteria have evolved for determining whether prior art is analogous: 1. Whether the art is from the same field of endeavor and 2. If the reference is not within the field of the inventor's endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved. A reference is reasonably pertinent if because of the matter with which it deals logically it would have commended itself to the inventor's attention in considering his problem."

It is believed to be clear that, as for the first criterion, the patent to Elson is not from the same field of endeavor as the golf training apparatus of the present invention.

As specifically stated in the patent to Elson, the Elson invention has an objective to have an improved inflation mechanism for inflatable devices, since in the prior art in toy balloons and similar inflatable devices the pressure differential between the interior and exterior of the balloon is very small, so that the valve closure pressure is correspondingly small with the consequence that high leakage is experienced with these valves.

The problem of the present invention is to provide a golf training apparatus with an upright rack, and a horizontal rod that can not harm and injure a golfer when the golfer hits the rod. Thus, if the second

criteria is applied, it will become clear that the reference is not reasonably pertinent to the particular problem with which the inventor of the present invention is involved.

It is therefore believed that for the above presented reasons, the rejection of claim 11 over the patent to Elson, which represents the non-analogous art, should be considered as not tenable.

Furthermore, claim 1 specifically defines that the golf training apparatus of the invention has an upright rack made of rigid material, and a rod provided on the upright rack and arranged so that a golf club is swingable through underneath the rod. In the patent to Elson the tank which contains a pressurized medium can not be considered to be an upright rack. First of all the tank is not a rack, and secondly the tank disclosed in the patent to Elson is not an upright element. An upright element is an element which has a vertical dimension greater than a horizontal dimension. From the consideration of Figure 1 of the patent to Elson, it can be seen that the tank 33 disclosed in the patent to Elson has a horizontal dimension which is greater than its vertical direction. Thus, the tank 33 in the patent to Elson is not an upright rack, but instead is a horizontal tank.

While in the applicant's opinion the device disclosed in the patent to Elson can not be even considered for use as a golf training apparatus, for the sake of argument if a person of ordinary skill in the art takes the device disclosed in the patent to Elson and tries to use it, he will not be able to swing a golf club underneath a horizontal extension of the tank, since the tank 33 is not an upright element but a horizontal element which is very low, and the horizontal extension of the tank attached to it at its right side would be located very low and would not allow swinging a golf club underneath the horizontal extension of the tank.

Turning now to the issue of the inflatable rod which is formed so that touching of the inflatable rod by a golfer is harmless and not accompanied by a risk of injuries. It is respectfully submitted that the patent to Elson does not disclose an element which can be compared with the inflatable rod. The balloon 10 shown in the drawings is not a part of the device disclosed in the patent to Elson, but instead it is an item which is separate from the valve of the invention disclosed in the patent to Elson, and it is a completely separate consumer item (environment to the invention) which is just inflatable by the pressure medium supplied from the tank 33. The element which is provided on the tank 33 and aligned substantially horizontally is the control valve mechanism 34 with the inflatable nozzle 36 and with the head 40. However, these elements are completely rigid and

can not be compared with an inflatable rod of the applicant's invention. If for some unknown and absolutely improbable reasons, the valve disclosed in the patent to Elson were used as a golf training apparatus, a golfer as a result of touching the elements 33, 36, 40 would harm himself and most probably injure himself, which completely contradicts the present invention and the language specifically provided in claim 11.

Furthermore, it is respectfully submitted that if for the sake of argument the balloon 10 in the patent to Elson were compared with an inflatable rod of the golf training apparatus of the present invention, the balloon would not operate at all for golf training purposes. As described in detail in the Elson patent, the invention disclosed in this reference deals with a valve for inflating balloons, in particular toy balloons and similar inflatable articles, as explained in line 27, column 1 of the patent. It is well known that such balloons are sensitive elements and are easily ruptured and burst. If such a balloon is used for a golf training apparatus, then after a first strike of the balloon by a golfer, the balloon would immediately burst and the "apparatus" would become unusable.

It is believed that the above presented arguments also clearly show that the golf training apparatus for practicing straight hits in accordance

with the present invention can not be considered as obvious from the patent to Elson.

It is respectfully submitted that the arguments presented in this Amendment were discussed into the Examiner's in telephonic conferences, and the Examiner's highly beneficial cooperation is gratefully acknowledged.

Claim 11 should be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

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